

*Cathy, I need all
docs. of yr + SB.*

~~CONFIDENTIAL~~

Declassified

ATTORNEY GENERAL

cc: SOLICITOR GENERAL
DAVID BRUMMELL

IRAQ: MEETING WITH DAVID MANNING, 14 OCTOBER

1. You are seeing David Manning and Baroness Morgan this afternoon at 5:30pm to discuss Iraq.

State of play

2. I annexed the original US/UK-sponsored draft resolution to the note which went into your weekend box, together with details of the latest US compromise for OP10 of the resolution, aimed at bringing the French and Russians on board. But according UKMIS telnos 1950 (also attached to my note of 11 October), the French have rejected this new language too.

3. To summarise, the current position is that the French and Russians are insisting on a two-resolution approach, ie that the first resolution should not, expressly or impliedly, authorise the use of force against Iraq in the event of a failure by Iraq to comply with the Council's demands. They want the Council to be able to decide separately on recourse to military action in the light of Iraq's response to the first resolution. On the other hand, while we appear to be open to the possibility of two resolutions (you have seen previously FCO proposals for language for resolution 2) the Americans are dead against.

4. In short, there appears to be stalemate, with neither the French nor the US willing to back down on their approach. This leaves the UK in a very difficult position, since among the P5 we probably have the strongest interest in obtaining a satisfactory resolution. Unlike the French, we are committed (politically) to participating in any military action. But unlike the Americans, the Government needs to be sure that there is a secure legal base for any action, given that the PM has stated on numerous occasions that any action will be in accordance with international law. And also unlike the Americans we have a more limited view of the scope of international law on the use of force.

5. In these circumstances, it seems that a critical stage in the negotiation of the resolution is approaching. It would be useful to confirm whether this is Number 10's assessment.

Assessment

6. We have no indication of precisely what Number 10 would like to discuss with you, but my best guess would be:

16/10

(a) what are your views on the US compromise language for OP10?

7. I would agree with John Grainger's assessment that this language does not amount to an authorisation to use force for the reasons given in his minute of 11 October. The Law Officers' have previously advised that it is not necessary to use the language "material breach" as such, but it is necessary for the Council to make clear that there has been a breach of the ceasefire conditions which is "sufficiently grave to undermine the basis or effective operation of the ceasefire".

(b) what would be the position if the UK were to propose a second resolution which was then not adopted by the Council?

8. One possible scenario is that a resolution is adopted in terms similar to the US draft with the new OP10 language, ie a resolution which we did not consider to be a sufficient authorisation for the use of force, but the Americans did. There is of course nothing to prevent us from tabling a draft second resolution authorising the use of force if, as expected, the Iraqis did not comply with the Council's demands in the first resolution. But there is no guarantee that such a resolution would be adopted. The question then would be whether the perverse failure of the Council to adopt the resolution (perhaps because of a single veto) would justify recourse to unilateral action. UKMIS telno 1950 suggests that the French view is that in these circumstances, the justification for unilateral action would be much stronger.

9. This is a question which would have to be considered very carefully in light of the circumstances at the time. The Law Officers advised in 1997 (the John Morris minute) that there could be "exceptional circumstances in which although the Council had not made a determination of material breach it was evident to and generally accepted by the international community as a whole that Iraq had in effect repudiated the ceasefire and that a resort to military force to deal with the consequences of Iraq's conduct was the only way to ensure compliance with the ceasefire conditions". I understand that this passage was included in the advice to cover the sort of situation where there Council was unable to act. But of course, the counter view would be that if the Council has rejected a resolution authorising the use of force, then under the scheme of the Charter, it cannot be said that force is legally justified.

(c) what if there is no resolution?

10. You are familiar with the arguments on self-defence, which would be the only possible alternative legal base in the event of no resolution. The key difficulty is of course the need to establish an imminent threat.

~~CONFIDENTIAL~~
declassified.

11. My recommendation would be that, if you have concerns about the lawfulness of military action under any of these scenarios, that you make this very clear at the meeting, as it is likely to increase the political efforts to achieve a satisfactory resolution.

12. I am available this afternoon to discuss any of this if that would be helpful.

CA.

CATHY ADAMS
14 OCTOBER 2002

